IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 389 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RAKESHBHAI @ PAPPU SHANKARBHAIGOSWAMI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 389 of 2004

MR CHETAN K PANDYA for Petitioner No. 1

MS ARCHANA RAVAL, LD.AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 2

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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 06/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenu has challenged the detention order passed against him by

the detaining authority, by its order dated 22.12.2003 under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ( "PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference about three criminal cases against the petitioner on 17.11.2003. The aforesaid three cases are under the Bombay Prohibition Act. It is alleged in the grounds of detention, the petitioner is dealing in foreign liquor and accordingly doing illegal bootlegging activities. After recording subjective satisfaction, the detaining authority has detained him under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. Learned advocate for the petitioner submitted that, in the instant case, the petitioner is detained under PASA only on the aforesaid three criminal cases registered against him, and that all these three cases are under the Bombay Prohibition Act. It is submitted that the authority has not even recorded statements of witnesses, and solely on the basis of three cases, the petitioner has been detained under PASA.

4. Learned advocate for the petitioner further submitted that, in the instant case, it cannot be said that the petitioner has committed any breach of public order. It is submitted that even otherwise also the last offence was registered against the petitioner on 17.11.2003 and the detaining authority has passed the order after period of one month i.e. on 22.12.2003 and, therefore, it was not necessary for the detaining authority to wait for a period of one month especially when the authority has not recorded the statements of any witnesses. It is also submitted that on the ground of delay in passing the detention order after the last incident, it can be presumed that the subjective satisfaction of the detaining authority is vitiated and on this ground, the petitioner is required to be released.

5. So far as the aforesaid contention, no affidavit-in-reply is filed by the authority at all nor is any file produced before the Court. In such type of cases, normally, reply is required to be filed, controverting the averments made in the petition; otherwise, it can be presumed that the averments in the petition are correct. In view of the said aspect also,

the averments made in this behalf is required to be accepted. Since the averments are not controverted, on the ground of delay in passing the detention order, this petition is required to be allowed.

6. Considering the said aspect, this petition is allowed. The order of detention dated 22.12.2003 is quashed and set aside. The detenu, Rakeshbhai @ Pappu Shankarbhai Goswami is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

( P.B. Majmudar, J. )

syed/